

local governments amend their zoning codes to provide at least one zone where emergency shelters are allowed “by-right”, meaning without a conditional use permit or other discretionary permit. If a locality does not already have at least one by-right zone, the Housing Element must identify the zone(s) and the zoning code must be amended within one year of adoption of the Housing Element.¹²

The identified zone(s) shall include sufficient capacity to accommodate the need for shelters, and the local government must also identify a zone that can accommodate at least one year-round emergency shelter.¹³ Housing Elements must indicate the suitability and compatibility of the zone(s) with emergency shelters, and also account for physical features and location.¹⁴ While jurisdictions retain flexibility in establishing development and management standards, these standards must be objective and both encourage and facilitate the development of, or conversion to, emergency shelters.¹⁵ One important standard is the maximum number of beds permitted in the by-right shelters.¹⁶

Three California Jurisdictions’ Approaches to SB 2

1. Sacramento County

Sacramento County’s most recent Housing Element was adopted on December 17, 2008, and was approved by HCD shortly thereafter as complying with State law requirements.¹⁷ Prior to its adoption, HCD indicated that, while Sacramento County already allowed emergency shelters by-right in two zones, the Element did not discuss

¹² CAL. GOV’T CODE § 65583(a)(4) (West 2010).

¹³ SENATE FLOOR, COMMITTEE ANALYSIS OF SB 2, at 3 (Sep. 11, 2007).

¹⁴ HCD SB 2 Memo, *supra*, note 1, at 8-9.

¹⁵ *Id.* at 10.

¹⁶ SENATE FLOOR, COMMITTEE ANALYSIS OF SB 2, at 4 (Sep. 11, 2007).

¹⁷ Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Terry Schutten, County Executive, County of Sacramento (Jan. 27, 2009).

development standards or other regulations that apply to emergency shelters.¹⁸ In response, Sacramento County further amended the Element to include this information, and it was then approved by HCD.¹⁹

In Sacramento County, emergency shelters with up to 100 beds are permitted by-right in both the General Commercial (GC) and Light Industrial (M-1) zones.²⁰ Shelters exceeding the 100 bed limit are subject to use permit reviews.

While the GC and M-1 zones are “by-right” in that they are not subject to a discretionary review process for shelters with 100 beds or fewer, all emergency shelters are still subject to a Development Plan Review and approval by the Planning Director prior to the issuance of a building or occupancy permit.²¹ A Development Plan Review assesses whether the project meets the objective criteria identified in the zoning code.

2. San Joaquin County

San Joaquin County is another example of a jurisdiction that already permitted by-right zones for emergency shelters in its zoning code, although in a different configuration than Sacramento County. An HCD memo from Spring of 2009 noted that, while San Joaquin County permitted shelters in certain zones, the Element still needed to describe how the permit procedures are non-discretionary, the appropriateness of shelter types to meet the needs of the County, and the suitability of the zones and the capacity for

¹⁸ Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Robert Sherry, Director of Planning and Comty. Dev., County of Sacramento (Aug. 29, 2008).

¹⁹ Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Terry Schutten, County Executive, County of Sacramento (Jan. 27, 2009).

²⁰ County of Sacramento, Housing Element, Chapter 7, p. 7-21 (adopted Dec. 2008).

²¹ Zoning Code of Sacramento County, Title 3, Chapter 20, Article 1, Sec. 320-31.

shelters.²² After further modifications, the County's most recent Housing Element was determined to comply with state law requirements.²³

The zoning ordinance divides emergency shelters into three categories: small, medium, and large.²⁴ Small shelters serve no more than two families and five adults, and are permitted by-right in all residential districts, three agricultural districts, and three commercial districts, as well as with an improvement plan in one industrial district.²⁵ Medium shelters serve no more than five families or fifteen adults, and are allowed by-right in 2 commercial districts, with an improvement plan in one industrial district, and with site approval in the three highest density residential districts and one industrial district. Large shelters serve more than five families and fifteen adults and are allowed subject to site approval in the highest density residential zone, as well as with an improvement plan in two commercial zones and one industrial zone.²⁶

According to the Element, site approvals and improvement plans are both ministerial processes that do not require a public hearing or conditional use permit.²⁷ The approval process for by-right uses is said to take only one week, while site approvals or improvement plans for larger shelters take between thirty and ninety days.²⁸ Apart from occupancy limitations and general compliance with zoning requirements for the corresponding district, the zoning code does not include a list of objective development standards for shelters.

²² Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Kerry Sullivan, Director, Comty. Dev. Dept., County of San Joaquin (May 22, 2009).

²³ Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Kerry Sullivan, Director, Comty. Dev. Dept., County of San Joaquin (Oct. 15, 2009).

²⁴ San Joaquin County Mun. Code Title 9, Division 1, Chapter 9-115, Sec. 9115.135.

²⁵ County of San Joaquin, Public Hearing Draft Housing Element, Sec 7.3, p. 7-110 (Oct. 2009).

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.*

3. Placer County

HCD reviewed Placer County's draft Housing Elements throughout late 2008 and early 2009. After the first review in 2008, HCD recommended that Placer County revise the Element in regards to several requirements, including compliance with SB 2. Specifically, it advised that Placer County must demonstrate that the identified by-right zone "provides sufficient opportunities to accommodate the identified need in the planning period, and should consider opportunities available in suitable locations near services and facilities. In addition, the element must demonstrate that proposed permit processing, development, and management standards encourage and facilitate the development of, or conversion to, emergency shelters."²⁹ Placer County amended the Element, which was then adopted on May 12, 2009, and was shortly thereafter approved by HCD.³⁰

Placer County's Housing Element now includes a program to amend the zoning ordinance to specifically define "temporary resident shelters" and allow them, under certain circumstances, by-right in Residential Multifamily (RM) districts. The Element also provides that standards for emergency shelters should not pose a constraint on their development.³¹ Additionally, the zoning ordinance will be updated to explicitly define both transitional and supportive housing, and provide that these are residential uses and only subject to restrictions that apply to other residential uses in the same zone.³²

State law aside, homelessness is a growing problem in Placer County. At a series of public workshops prior to the adoption of the latest Housing Element, residents

²⁹ Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Michael Johnson, Planning Director, County of Placer (Oct. 10, 2008).

³⁰ Letter from Cathy Creswell, Deputy Director, Cal. HCD Div. of Housing Policy Dev., to Tom Miller, County Executive Officer, County of Placer (June 10, 2009).

³¹ County of Placer, Housing Element, Section II(A), p. 99 (adopted May 2009) [hereinafter Placer County Housing Element].

³² *Id.*

expressed concerns that homelessness is a growing issue in the County, and also requested a better definition of “by-right” and specific identification of where special needs housing can be built.³³

Also, in addition to the requirements of SB 2 and the Housing Element, the amendments are meant to implement two Placer County General Plan policies relating to homelessness and the County’s “Ten Year Plan to End Homelessness.” General Plan Policy G-2 involves assisting various nonprofit organizations involved with helping the homeless. Policy G-3 provides that the County will continue working with local organizations through the “Continuum of Care” strategy to address homelessness, which may include a homeless crisis intake center to assist persons who wish to become self-sufficient.³⁴

In 2004, Placer County, like many California jurisdictions, instituted a “Ten-Year Plan to End Homelessness.”³⁵ Specifically, the Plan takes a four-pronged approach to addressing homelessness: prevention, access, teamwork, and housing (PATH).³⁶ The Plan notes that Placer County is “far from meeting the needs of homeless persons” in the community, and that a plan needs to be developed to eliminate homelessness, rather than just manage it.³⁷ Listed as critical to this goal are affordable housing, including short-term housing, and barrier-free supportive services.³⁸

Although the Ten-Year Plan is not legally binding on Placer County, it is informative because many of the concerns expressed in the Plan parallel the policies behind SB 2. HCD specifically identifies Ten-Year Plans as resources to identify and

³³ Placer County Housing Element.

³⁴ *Id.*

³⁵ Placer Consortium on Homelessness and Affordable Housing, *Ten-Year Plan to End Homelessness in Placer County*, at 1 (July 2004) [hereinafter *Ten Year Plan*].

³⁶ *Id.* at 2.

³⁷ *Id.* at 3.

³⁸ *Id.* at 7.

analyze homeless needs.³⁹ The Plan illustrates the growing concern about homelessness in Placer County and the various methods available to help end it. Notably, a consistent theme in both SB 2 and in the Plan is the removal of barriers to special needs housing. This is the primary area where the proposed zoning code amendments may become problematic for the County's goal to end homelessness.

The proposed Emergency Shelter Zoning Amendments
are too restrictive to meet the needs and goals of Placer County.

As currently proposed the Placer amendments would restrict by-right development of emergency shelters to those with twenty or fewer persons which are located only in RM zones. Additionally, shelters serving fewer than twenty persons would be allowed in the Neighborhood Commercial, Highway Service, and Resort zoning districts with a Minor Use Permit, and in the General Commercial and Commercial Planned Development zones with a Conditional Use Permit. If a shelter accommodates over twenty persons, then it is subject to a Conditional Use Permit in all of the above referenced zones, with the exception of the Resort zone, where shelters are not permitted.

Limiting by-right shelters to twenty beds conflicts with the policy behind SB 2. For example, according to HCD's SB 2 instructional memo provided to California jurisdictions, "a standard establishing the maximum number of beds should act to encourage the development of an emergency shelter."⁴⁰ The twenty bed limit could act to discourage the development of emergency shelters for both practical and economic

³⁹ HCD SB 2 Memo, *supra*, note 1, at 7.

⁴⁰ HCD SB 2 Memo, *supra*, note 1, at 11.

reasons. Because of this, emergency shelters should be allowed by-right in Placer County without a limit on the number of occupants. If the County determines that a limitation is essential, it should place the limit at one hundred beds rather than twenty.

The Element notes that, in terms of emergency shelters, transitional, and supportive housing, there is an unmet need of 412 beds in Placer County.⁴¹ The need for both transitional and permanent supportive housing is high, and although the Ten-Year Plan has put a premium on this type of housing, emergency shelters are a crucial first step to getting people off the street.⁴²

Currently emergency shelter services in Placer County include domestic violence shelters and The Gathering Inn, an intra-county “nomadic” shelter that houses a maximum of 60 persons per night.⁴³ Together these resources provide 94 emergency shelter beds per night. According to the Element, the unmet need for emergency shelter beds, as of 2007, was a total of 52 beds.⁴⁴ However, the homeless population continues to grow, and the current need is higher.⁴⁵ Based upon the 2009 census count of 234 unsheltered homeless, and the current inventory of 94 emergency beds, there is a current need for an additional 140 emergency shelter beds.

Additionally, limiting by-right shelters to twenty beds may be, in many instances, economically unappealing for potential shelter developers. Development standards for these projects must, at a minimum, conform with the standards for other buildings in the RM zone, and are also subject to additional requirements such as an onsite manager. Emergency shelters provide a minimum amount of services, and the main feature is the

⁴¹Placer County Housing Element.,

⁴² Ten Year Plan, *supra* at note 35.

⁴³ *Id.*

⁴⁴ Placer County Housing Element, at 53. Specifically, forty individual beds and twelve family beds were needed.

⁴⁵ 2009 homeless count of 616; compare with (2007 homeless count of 591 persons) *See id.* at 52); *compare with* Ten Year Plan, at 4 (2002 homeless count of 405 persons).

availability of beds and a safe place to sleep for the night. Money spent to develop and maintain a shelter is more efficiently put to use in a few larger shelters, as opposed to several smaller shelters.

Other California jurisdictions have been more flexible in allowing a larger number of beds in by-right shelters. For example, as noted earlier, Sacramento County permits up to 100 beds in by-right zones.⁴⁶ San Joaquin County allows a different number of beds depending on the zone at issue.⁴⁷ The City of Fremont's Housing Element, recently approved by HCD, permits temporary emergency shelters operated as an accessory use by a public or quasi-public organization to serve up to forty beds, and all other temporary or permanent emergency shelters are limited to 100 beds.⁴⁸

Placer County would benefit from permitting at least one hundred beds in the by-right zone, as well as in the zones that require a Minor Use Permit. Doing so would encourage the development of emergency shelters, which is consistent with the objective of both SB 2 and the Ten-Year Plan. Larger shelters would serve the County's homeless population in a more efficient manner, as well as provide a more economically realistic option.

The proposed amendment should provide additional by-right zones.

A primary purpose behind the by-right requirement of SB 2 is to remove the barrier of a city or county's discretion in approving homeless shelters in certain areas.⁴⁹ Consistent with this purpose, Placer County is proposing to amend its zoning code to include the Residential Multifamily (RM) zone as an allowed by-right zone for

⁴⁶ Zoning Code of Sacramento County, Title 3, Chapter 20, Article 1, Sec. 320-31.

⁴⁷ County of San Joaquin, Public Hearing Draft Housing Element, Sec 7.3, p. 7-109 (Oct. 2009).

⁴⁸ City of Fremont, Housing Element, Chapter 4, p. 112 (adopted July 2009).

⁴⁹ See HCD SB 2 Memo, *supra*, note 1, at 10 (describing how localities must have at least one non-discretionary zoning classification for emergency shelters).

emergency shelters.⁵⁰ As noted above, either a Minor Use Permit or a Conditional Use Permit is required in all other zones. Also, any shelter in the RM zone that exceeds twenty beds is subject to a Conditional Use Permit. It is submitted that to comply with the policy behind SB 2 and the Ten-Year Plan, Placer County must allow additional by-right zones for emergency shelters. Shelter should be permitted by right in the C1, C2, CPD, HS, and Res. Commercial districts, and also in one or more Industrial Districts.

In HCD's SB 2 informational memo, it suggests certain methods by which jurisdictions can determine the appropriate by-right zones.⁵¹ Elements should "consider what other uses are permitted in the zone" and "whether the zone is suitable for residential or emergency shelters."⁵² Zones that are in transition from industrial uses to commercial, office, or residential uses, or commercial zones that also allow residential or residential compatible services would be appropriate areas.⁵³ The memo cites Sacramento County as an example of a jurisdiction that permits shelters by-right in a commercial zone along with residential and residential-compatible uses.⁵⁴

The additional zones requested above for Placer would be consistent with the HCD list of considerations. In addition, this zoning approach would be consistent with the Placer County Housing Element program requiring consideration of an expansion of by-right multi-family residential housing with twenty or fewer units per acre in Neighborhood Commercial (C1) and General Commercial (C2) zones.⁵⁵ Program B-15 of the Housing Element provides that, to "facilitate the construction of high density

⁵⁰ Placer County Housing Element, *supra* note 57, at Section II(A), p. 99.

⁵¹ *Id.* at 8.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.* at 9.

⁵⁵ Placer County Housing Element, at Section III(A), p. 135.

housing on commercially-zoned sites, the County shall consider amending the zoning ordinance for multi-family housing use.”⁵⁶

The currently proposed emergency shelter amendments would require shelters serving fewer than twenty beds to be subject to a Use Permits in the C1 and C2 zones.⁵⁷ If Placer County is moving towards developing high density housing in these sites, then it would also, as per the HCD SB 2 memo, be an appropriate zone for emergency shelters.

Regardless of whether multi-family housing is permitted in commercial zones, emergency shelters should be permitted by-right in more than one zone in Placer County. Several other California jurisdictions, including Sacramento County and San Joaquin County, provide for more than one by-right zone. To do so would allow for more locational flexibility, which would ultimately encourage the development of shelters.

Conclusion

The homeless population in Placer County, as in many California counties, is growing. While permitting emergency shelters by-right in one zone meets the minimum requirement of SB 2, it will likely be insufficient in the long-term to meet the growing needs of the County. SB 2 requires Housing Elements to encourage and facilitate the development of shelters, and Placer County can accomplish this more efficiently by increasing the number of permitted beds per shelter, authorizing shelters by-right in more than one zone, and prioritizing emergency shelters and permanent supportive housing. This would provide more flexibility for future needs and demonstrate consistency with SB 2 and Placer County’s own goal of ending homelessness.⁵⁸

⁵⁶ Placer County, HCD Review Draft Housing Element Policy Doc., at 14 (Feb. 27, 2009).

⁵⁷ *Id.* at 26.

⁵⁸ See generally Ten Year Plan, *supra* note 66.

Respectfully submitted,

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Point-in-Time Homeless Count in Placer County January 27, 2009

The Placer Consortium on Homelessness (PCOH) conducted a count of the homeless on January 27, 2009. The count included a survey component and was a collaborative effort of community volunteers, including homeless and formerly homeless individuals, and PCOH member agencies.

The federal Department of Housing and Urban Development (HUD) requires that a point-in-time homeless count occur within specific guidelines in order to qualify for Continuum of Care/ Supportive Housing Program (SHP) funding.

Although HUD requires that a point-in-time count be conducted, it is only a *snapshot* reflecting those persons identified as homeless on the day of the count and is not an absolute number. Many individuals and families move in and out of homelessness over the course of a year.

There were a total of 616 homeless people counted; 416* homeless households were surveyed (a household may be one person). Limited information was collected on 28 people who appeared to be unsheltered homeless but could not be interviewed. These are included only in the total counts.

Point-In Time Homeless Count - January 27, 2009						
Number of homeless persons counted:	616	Male	300			
Number of homeless households without children:	334*	Female	155			
Number of homeless households with children:	82*	Unknown	6			
Number of children under 18 years of age:	155	Total Adults	461			
	Survey		%			
Adults continuously homeless for more than one year:	222		48%			
Adults homeless 4 or more times in the last 3 years:	159		34%			
Number surveyed who did not respond:	51		11%			
	Survey		%			
Chronically homeless individuals:	102		22%			
Chronically homeless self identifying as having mental illness:	82		80%			
Chronically homeless self identifying as having a substance abuse problem:	86		84%			
Chronically homeless U.S. military veterans:	28		27%			
	Survey		%			
Homeless persons in Transitional Housing (Sheltered):	300		49%			
Homeless persons in Emergency Housing (Sheltered):	82		13%			
Unsheltered persons:	234		38%			
	Survey		%			
Homeless children under 18 living in Transitional Housing (Sheltered):	118		76%			
Homeless children in Emergency Housing (Sheltered):	4		3%			
Unsheltered children:	33		21%			
Subpopulations	Total		Sheltered		Unsheltered	
	Survey	%	Count	%	Count	%
Chronically homeless individuals:	102	22	25	24	77	76
Adults self identifying as having mental illness:	180	39	119	66	61	34
Adults self identifying as having a substance abuse problem:	212	46	154	73	58	27
Adults with physical disabilities:	129	28	55	43	74	57
Adults with HIV/AIDS:	5	1	0	0	5	100
Veterans:	55	12	21	38	34	62
Adult Victims of Domestic Violence:	97	21	75	77	22	23

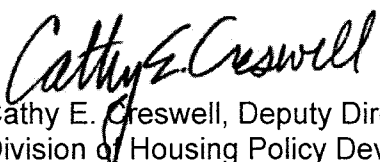
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**MEMORANDUM**

DATE: May 7, 2008

TO: Planning Directors and Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Senate Bill 2 -- Legislation Effective January 1, 2008:
*Local Planning and Approval for Emergency Shelters and
Transitional and Supportive Housing***

Chapter 633, Statutes of 2007 (SB 2) clarifies and strengthens housing element law to ensure zoning encourages and facilitates emergency shelters and limits the denial of emergency shelters and transitional and supportive housing under the Housing Accountability Act. The law will facilitate efforts to address the critical needs of homeless populations and persons with special needs throughout all communities in California. Generally, SB 2 amends housing element law regarding planning and approval for emergency shelters and transitional and supportive housing as follows:

Planning (Government Code Section 65583)

- At least one zone shall be identified to permit emergency shelters without a conditional use permit or other discretionary action.
- Sufficient capacity must be identified to accommodate the need for emergency shelters and at least one year-round emergency shelter.
- Existing or proposed permit procedures, development and management standards must be objective and encourage and facilitate the development of or conversion to emergency shelters.
- Emergency shelters shall only be subject to development and management standards that apply to residential or commercial within the same zone.
- Written and objective standards may be applied as specified in statute, including maximum number of beds, provision of onsite management, length of stay and security.
- Includes flexibility for jurisdictions to meet zoning requirements with existing ordinances or demonstrate the need for emergency shelters can be accommodated in existing shelters or through a multi-jurisdictional agreement.

- Transitional and supportive housing shall be considered a residential use and only subject to those restrictions that apply to other residential uses of the same type in the same zone.

Local Approval (Government Code Section 65589.5: Housing Accountability Act)

- Limits denial of emergency shelters, transitional housing or supportive housing by requiring specific findings.
- Some findings shall not be utilized if new planning requirements of SB 2 are not met; such as identifying a zone without a conditional use permit,

Attached is a briefing paper informing local governments of SB 2, providing assistance in evaluating these new provisions to effectively implement this important new State law; in addition to a copy of the legislation. Electronic copies of these can be found on the Department's website at www.hcd.ca.gov or the Senate's website at www.senate.ca.gov. You may also obtain copies of published bills from the Legislative Bill Room by calling (916) 445-2323. If you have any questions, or seek additional technical assistance, please contact Paul McDougall, HPD Manager, at (916) 445-4728.

Attachments

Chapter 633, Statutes of 2007 (Senate Bill 2)

TABLE OF CONTENTS

Introduction

Homeless Needs	2
Purpose and Objectives of SB 2	2

Section 1: Planning (Government Code Section 65583)

Identifying and Analyzing Needs and Resources	4
Identifying Zoning for Emergency Shelters	5
Permitting Emergency Shelters without Discretionary Action	7
Development Standards to Encourage and Facilitate	7
Encouraging Multi-jurisdictional Cooperation and Coordination	9
Existing Ordinances and Existing Shelters that Accommodate Need	10
Transitional and Supportive Housing	10
Housing Element Policies and Programs	11
Timing: When SB 2 Applies	12

Section 2: Local Approval (Government Code Section 65589.5)

The Housing Accountability Act	14
Zoning Inconsistency	14

Attachments

1 – Statutory Changes to Housing Element Law (Underline Version)	15
2 – Definitions	27
3 – Helpful Links	29